

REMARKS

Reconsideration and withdrawal of all grounds of rejection in the Office Action, and allowance of all the pending claims are respectfully requested in light of the above amendments and the followings remarks. Claims 1-2, 4-22 and 24-31 as shown above are pending herein. Base claims 1 and 21 have been amended to clarify the claimed invention in that the two-way communications link includes means for simultaneous broadcast of a plurality of different software applications via a plurality of broadcast channels in communication with said return channel, and each respective portable client including selective tuning capability to selectively receive any of the plurality of channels over the return channel; support for same is found in the specification at least at page 6, line 24 to page 7, line 4.

Summary of the Rejections:

(1) Claims 1-2, 4-22 and 24-31 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the combination of Metz et al. (U.S. 5,978,855, hereafter "Metz") in view of Hall et al. (U.S. 6,356,543, hereafter "Hall") and further in view of Casagrande et al. (U.S. 6,049,8952, hereafter "Casagrande").

Applicants' Traversal:

It is respectfully submitted that none of the instant claims would have been obvious to a person of ordinary skill in the art at the time of invention in view of the combined teachings of the references.

In particular, base claims 1 and 21 have been amended, wherein base claim 1 now recites that the two-way communications link includes means for simultaneous broadcast of a plurality of different software applications via a plurality of broadcast channels in communication with said return channel, and each respective portable client including selective tuning capability to selectively receive any of the plurality of channels over the return channel.

Base claim 21 has also been amended to recite that a claimed receiver includes a tuner that is selectively tunable to receive a selected one of a plurality of software applications being simultaneously broadcasted by a broadcast system over a plurality of channels that are selectively in communication with a return channel from the broadcast system.

It is respectfully submitted that the combination of Metz, Hall and Cassagrande fails as a combination, to disclose, suggest or motivate an artisan to build such that the claimed invention would not be patentable.

The combination of references fails to teach such a claimed element as Cassagrande (and thus the combination of Metz, Hall and Cassagrande) fails to contemplate a plurality of channels in communication with the portable devices such that users may selectively tune in a particular broadcast from a plurality of broadcasts.

Finally, it is respectfully submitted that it was held by *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) that in order to establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to

modify the reference or combine the reference teachings.

Second, there must be a reasonable expectation of success.

Third, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, and not based on Applicant's disclosure.

In the instant case, Applicants respectfully submit that none of the three basic criteria have been met, thus a *prima facie* case of obviousness has not been set forth.

Applicants respectfully note that it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention.

Finally, with regard to any claims dependent thereto, Applicants respectfully submit that all of the claims dependent from one of base claims 1 and 21 are allowable at least for dependence upon what are believed to be allowable base claims, without even contemplating the merits of the dependent claims is non-obvious.

Therefore, it is respectfully submitted that none of the instant claims would be obvious in view of the teachings of the combination of references.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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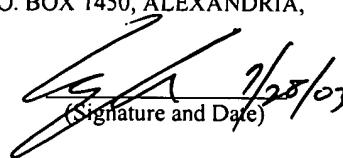
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